

lit.

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

U-HAUL COMPANY OF INLAND)
NORTHWEST, a Washington)
Corporation,)
Appellant,)
v.)
State of Washington DEPARTMENT)
OF ECOLOGY,)
Respondent.)

PCHB No. 91-242

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

On November 22, 1992 U-Haul Company of Inland Northwest, Inc. (U-Haul) filed an appeal with the Pollution Control Hearings Board contesting the Department of Ecology's (Ecology) determination that the Company is a "potentially liable party" under Chapt. 70.105D RCW, the Model Toxics Control Act.

Motions practice was scheduled. On January 22, 1992 Ecology filed a Motion and Memorandum for Dismissal, with exhibits in support. On January 29, 1992 U-Haul filed a Memorandum in Opposition and exhibits. On February 6, 1992 Ecology filed a Reply. On February 18, 1992 oral argument was held. Appellant U-Haul was represented by Attorneys P. Arley Harrel and Mark M. Myers of Williams, Kastner & Gibbs (Seattle). Respondent Ecology was represented by Assistant Attorney General Mary Sue Wilson. Present for the Board were Members: Judith A. Bendor, Presiding, Harold S.

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1 Zimmerman, Chairman, and Annette S. McGee. Enforcement Order DE
2 92TC-C108 was admitted into evidence without opposition. The
3 proceedings were taken by Lisa Alger, court reporter with Gene Barker
4 & Associates (Olympia). A transcript has been filed with the Board.

5 The Board reviewed the filings, deliberated and issued an oral
6 ruling on February 18, 1992, granting the dismissal, and directing the
7 prevailing party to file a proposed decision. Ecology filed a
8 proposed decision on March 30, 1992. U-Haul filed a proposed decision
9 on April 1, 1992.

10 Having reviewed the foregoing, the Board now issues these:

11 UNDISPUTED FINDINGS OF FACT

12 I

13 U-Haul owns property located in the City of Yakima's industrial
14 corridor. Soil and groundwater samples taken from the property have
15 indicated the presence of perchloroethylene (sometimes also referred
16 to as tetrachloroethylene, perchloroethene, or tetrachloroethene;
17 hereinafter PCE) at the property.

18 II

19 Ecology is the state agency charged with the responsibility for
20 implementing the Model Toxics Control Act, Chapter 70.105D RCW (the
21 MTCA). By letter dated September 5, 1991, Ecology notified U-Haul
22 that Ecology intended to make a determination that U-Haul was a
23 "potentially liable person" (PLP) for the release of a hazardous
24 substance at U-Haul's property.

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26 FINAL FINDINGS OF FACT,
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III

U-Haul responded to Ecology's letter, contesting Ecology's proposed PLP determination and enclosing an October 8, 1991 report from Sweet-Edwards/EMCON regarding the proposed PLP determination. (Letter written by P. Arley Harrel on behalf of U-Haul, dated October 8, 1991.)

Ecology notified U-Haul of its final determination that U-Haul was a PLP. (Letter dated October 23, 1991.)

On November 22, 1991, U-Haul filed with the Pollution Control Hearings Board a Notice of Appeal of Ecology's final PLP determination. This became appeal PCHB No. 91-242. Motions practice ensued.

IV

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

From these Undisputed Findings of Fact, the Board makes these:

CONCLUSIONS OF LAW

I

The Pollution Control Hearings Board has the power and authority to determine whether it has jurisdiction to hear this appeal.

The Board has only that jurisdiction that is specifically granted by statute or necessarily implied. Seattle v. DOE, 37 Wn. App. 819 (1984). The Board is not a court of general jurisdiction.

1 II

2 Ecology's determination that U-Haul is a "potentially liable
3 person" was made pursuant to RCW 70.105D.020(8) and RCW 70.105D.040,
4 of the Model Toxics Control Act (MTCA).

5 The language of RCW 70.105D.060 is clear and unambiguous.
6 Ecology's decisions under RCW 70.105D.020(8) and RCW 70.105D.040 are
7 appealable exclusively in Superior Court. RCW 70.105D.060.

8 III

9 The Administrative Procedures Act, Chapter 34.05 RCW,
10 particularly the definition of an adjudicative hearing found at RCW
11 34.05.010(1), does not grant the Board separate jurisdiction to hear
12 this appeal.

13 IV

14 The Board's statute, Chapter 43.21B RCW, in light of the express
15 language of RCW 70.105D.060, also does not grant the Board
16 jurisdiction to hear this appeal.

17 V

18 The Board does not have jurisdiction to decide constitutional
19 issues, except for those involving evidentiary objections (see RCW
20 34.05.452). Such matters, including ones involving due process,
21 properly belong in Superior Court. The Board, therefore, does not
22 reach any of the constitutional issues asserted by appellant.

1 VI

2 The Board does not have jurisdiction to hear an appeal from a
3 determination of a potentially liable party under Chapt. 70.105D RCW.

4 VII

5 Any Undisputed Finding of Fact which is deemed a Conclusion of
6 Law is hereby adopted as such.

7 From these Conclusions of Law, the Board enters the following:
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ORDER

This appeal is DISMISSED.

DATED this 9th day of April, 1992.

POLLUTION CONTROL HEARINGS BOARD


JUDITH A. BENDOR, Presiding


HAROLD S. ZIMMERMAN, Chairman


ANNETTE S. MCGEE, Member

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